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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

GERMAN AMARRA,

Plaintiff and Appellant,

v.

INTERNATIONAL CHURCH OF THE
FOURSQUARE GOSPEL,

Defendant and Respondent.

B159587

(Super. Ct. No. VC033122)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Patrick T. Meyers, Judge. Affirmed.

Gabriel & Associates and Stevan Colin for Plaintiff and Appellant.

Hosp, Gilbert, Bergsten & Phillips, Warren L. Gilbert and Jay D. Brown for
Defendant and Respondent.

Plaintiff and appellant German Amarra (plaintiff) appeals from the summary judgment in favor of defendant and respondent International Church of the Foursquare Gospel (the Church) in this personal injury action. We conclude plaintiff has failed to raise a triable issue of material fact as to duty and affirm.

FACTS AND PROCEDURAL BACKGROUND

Plaintiff had attended services at the Church since 1987. In 1999, the Church building required repainting. Plaintiff had been self-employed doing maintenance and repair work since 1987, and had done previous maintenance work at the Church on a volunteer basis. Because of plaintiff's experience, Pastor Orlando Vallejo asked plaintiff to repaint the building as an unpaid volunteer. Plaintiff agreed, but told Pastor Vallejo the building must first be sandblasted to remove the old paint. Pastor Vallejo agreed to supply a sandblaster. Plaintiff, who had used a sandblaster more than 50 times in the past, asked Pastor Vallejo to supply scaffolding for him to use while sandblasting. Pastor Vallejo said the Church could not afford scaffolding, but offered to provide a ladder instead. Plaintiff had never sandblasted from a ladder before, but knew other people safely did so, and agreed. Plaintiff would need assistants, particularly someone to hold the ladder, and asked Pastor Vallejo to hire the men who usually worked with plaintiff. Pastor Vallejo told plaintiff the Church did not have the money to pay plaintiff's workers and would instead ask fellow members of the Church to assist plaintiff. Plaintiff agreed.

On December 11, 1999, plaintiff sandblasted the Church building. The Church had supplied a sandblaster, a ladder, and three workers. One worker put the sand in the sandblaster. The others, Luis Amarra¹ and Luis Martinez, were to hold the ladder for plaintiff. While plaintiff was sandblasting the Church building from atop the ladder, the pressure from the sandblaster moved the ladder away from the building and plaintiff fell,

¹ Luis Amarra is plaintiff's nephew and had worked for plaintiff in the past.

sustaining injuries. Although plaintiff was looking straight ahead when he worked and did not watch Amarra and Martinez, he believed Amarra and Martinez had let go of the ladder, causing his fall.

Allegations of the Complaint

Plaintiff brought this action against the Church, seeking damages for his injuries.² The operative complaint is the first amended complaint, as modified by the trial court's ruling on demurrer. At the time of the summary judgment motion, there were two remaining causes of action: negligence and negligent supervision.

In his negligence cause of action, plaintiff alleged the Church was liable as a landowner who knew or should have known of the dangerous condition on its property—the dangerous condition being work conducted by unsupervised workers. In his negligent supervision cause of action, plaintiff alleged the Church knew or should have known that Amarra and Martinez had poor judgment and would act with reckless disregard for plaintiff's safety, or failed to sufficiently investigate Amarra and Martinez before assigning them to help plaintiff.

Motion for Summary Judgment

The Church moved for summary judgment on three grounds: no duty owed; no evidence of how the accident occurred; and no causation. The motion for summary judgment was supported by excerpts from plaintiff's deposition. Specifically, the Church relied on plaintiff's testimony that plaintiff, and no one else, instructed Amarra and

² The complaint also names as defendants Pastor Moses Lopez and Mas Que Vencedores. There is no indication either of these defendants was ever served or appeared in this action. The only defendant in whose favor judgment was entered is the Church.

Martinez to hold the ladder. Plaintiff testified he had told Pastor Vallejo he needed someone to hold the ladder, and Pastor Vallejo had told him Amarra and Martinez would do so. He therefore assumed Pastor Vallejo had told Amarra and Martinez that they would be required to hold the ladder. However, he did not know if Pastor Vallejo had specifically explained to Amarra and Martinez what they would be required to do. At the jobsite, plaintiff placed the ladder and told Amarra and Martinez to hold it. He testified he was “the one that actually gave them instructions on what to do.” Plaintiff testified he was the only person to give them instructions. On appeal, plaintiff conceded Pastor Vallejo was not even at the jobsite at the time of plaintiff’s fall.

Additionally, the Church submitted plaintiff’s testimony that he did not see whether Amarra and Martinez had let go of the ladder when he fell, nor did anyone tell him they had.

Plaintiff’s Opposition

Plaintiff opposed the motion for summary judgment with a declaration which, in some ways, contradicted his deposition testimony.³ Plaintiff also relied on his own deposition testimony. For example, although plaintiff testified at deposition that he had instructed Amarra and Martinez to hold the ladder, he also testified that he had not “supervise[d]” them. However, he again conceded in his declaration that he “had explained that [Amarra and Martinez] needed to hold [the ladder] so it would not fall.”

In his declaration, plaintiff stated the failure of Amarra and Martinez to hold the ladder had caused it to topple. Yet plaintiff also stated that his mask had prevented him

³ For example, at deposition, plaintiff testified that he volunteered to help at the Church because he believed doing good works for the Church would result in spiritual reward. In his declaration, plaintiff stated he did not volunteer to do the work, but agreed to do so because Pastor Vallejo applied “spiritual pressure.”

from seeing what his helpers were doing. It is apparent plaintiff's belief Amarra and Martinez had let go of the ladder is based only on the fact that the ladder fell.

Hearing, Judgment, and Appeal

After hearing, the trial court granted the summary judgment motion. The trial court concluded there was no triable issue of fact as to whether the Church controlled the work, and there was therefore no duty owed plaintiff as plaintiff and the Church were involved in a joint enterprise. Judgment was entered in favor of the Church. Plaintiff filed a timely notice of appeal.

DISCUSSION

Standard of Review

“The policy underlying motions for summary judgment and summary adjudication of issues is to “promote and protect the administration of justice, and to expedite litigation by the elimination of needless trials.”” (*Hood v. Superior Court* (1995) 33 Cal.App.4th 319, 323.)

“Any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding.” (Code Civ. Proc., § 437c, subd. (a).) The motion and the opposition to the motion “shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken.” (*Id.*, subd. (b).) Separate statements setting forth plainly and concisely all material facts which the parties contend are undisputed must be included. (*Ibid.*) “Evidentiary objections not made at the hearing shall be deemed waived.” (*Ibid.*) “The motion for summary judgment shall be granted if all the papers submitted show that there is no

triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence . . . and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted . . . on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.” (*Id.*, subd. (c); *KOVR-TV, Inc. v. Superior Court* (1995) 31 Cal.App.4th 1023, 1028.)

A defendant or cross-defendant meets his or her burden upon a motion for summary judgment or summary adjudication if that party has proved “one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to that cause of action.” (Code Civ. Proc., § 437c, subd. (o)(2).) The defendant need not conclusively negate an element of the plaintiff’s cause of action, but must only show that one or more of its elements cannot be established. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853.) The burden of proof at trial is relevant to the burden of production borne by the defendant moving for summary judgment. “[I]f a defendant moves for summary judgment against [a plaintiff who would bear the burden of proof by a preponderance of evidence at trial], he must present evidence that would require a reasonable trier of fact *not* to find any underlying material fact more likely than not.” (*Id.* at p. 851, original italics.) The defendant or cross-defendant can satisfy its burden either by producing evidence which negates an element of the cause of action, or by showing, through the plaintiff’s or cross-complainant’s deficient discovery responses, that the plaintiff does not possess, and cannot reasonably obtain, evidence to establish that element. (*Id.* at pp. 853-854; *Villa v. McFerren* (1995) 35 Cal.App.4th 733, 747-749; *Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 580-581.)

“Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists” (Code Civ. Proc., § 437c, subd. (o)(2).) In opposing the motion, the plaintiff or cross-complainant may not simply rely upon allegations or denials of the

pleadings; the plaintiff or cross-complainant must set forth specific facts showing that a triable issue of material fact exists. (*Ibid.*; *Union Bank v. Superior Court*, *supra*, 31 Cal.App.4th at pp. 580-581, 593.) A declaration which simply contradicts a prior discovery admission is not normally sufficient to raise a triable issue of fact. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21-22.)

“There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 850.) Although “the court may not weigh the plaintiff’s evidence or inference against the defendants’ as though it were sitting as the trier of fact, it must nevertheless determine what any evidence or inference *could show or imply to a reasonable trier of fact.*” (*Id.* at p. 856, original italics.) “If [the] party moving for summary judgment . . . would prevail at trial without submission of any issue of material fact to a trier of fact for determination,” the motion should be granted. (*Id.* at p. 855.)

On appeal, we exercise “an independent assessment of the correctness of the trial court’s ruling, applying the same legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law.” (*Iverson v. Muroc Unified School Dist.* (1995) 32 Cal.App.4th 218, 222.) We review rulings on evidentiary objections in motions for summary judgment de novo. (*Williams v. Saga Enterprises, Inc.* (1990) 225 Cal.App.3d 142, 149, fn. 2.) “The appellate court must examine only papers before the trial court when it considered the motion, and not documents filed later. [Citation.] Moreover, we construe the moving party’s affidavits strictly, construe the opponent’s affidavits liberally, and resolve doubts about the propriety of granting the motion in favor of the party opposing it.” (*Szadolci v. Hollywood Park Operating Co.* (1993) 14 Cal.App.4th 16, 19; accord, *Lorenzen-Hughes v. MacElhenny, Levy & Co.* (1994) 24 Cal.App.4th 1684, 1686-1687.)

Negligence/Dangerous Condition

To prove a cause of action for negligence or premises liability based on a dangerous condition, the plaintiff must establish a dangerous condition of property which caused the injury and the defendant's actual or constructive knowledge of the dangerous condition. (*Jones v. Hotchkiss* (1956) 147 Cal.App.2d 197, 202.) A dangerous condition can be based on the actions of a third party on the landowner's property, if the landowner should be aware of the third party's conduct and realize it is dangerous. (*Edwards v. Hollywood Canteen* (1946) 27 Cal.2d 802, 810.)

The Church argues there was no duty owed in this case, because Church and plaintiff (as well as Amarra and Martinez) were all involved in the joint enterprise of repainting the Church building. When different parties are involved in a joint enterprise, there is no duty owed among them, unless one party is in control of the enterprise. In other words, if one party exercises control of the enterprise, that party may be held liable; if control is exercised equally, there can be no liability. (*Timmons v. Assembly of God Church* (1974) 40 Cal.App.3d 31, 34-35; *Fernquist v. San Francisco Presbytery* (1957) 152 Cal.App.2d 405, 410-411; *Coleman v. California Y. Meeting, etc.* (1938) 27 Cal.App.2d 579, 581.)

The Church moved for summary judgment on the basis that plaintiff, not the Church, exercised control over the sandblasting operation. It is undisputed plaintiff was an experienced sandblaster. It does not appear that Pastor Vallejo even knew sandblasting was required. Pastor Vallejo was not at the jobsite. Plaintiff admitted he was the only person at the jobsite who gave direction to Amarra and Martinez.

Plaintiff attempted to raise a triable issue of fact with his deposition testimony that he had not "supervise[d]" Amarra and Martinez, and the fact Pastor Vallejo refused him scaffolding and his own paid helpers.

While plaintiff may have believed he was not "supervis[ing]" the work of Amarra and Martinez, there is no dispute that plaintiff, and no one else, gave direction to Amarra

and Martinez at the jobsite. Plaintiff, and no one else, told Amarra and Martinez to hold the ladder so he would not fall.

Plaintiff also relies on the fact that he had asked Pastor Vallejo to provide scaffolding and his own paid helpers, but Pastor Vallejo refused, choosing to provide a ladder and Church volunteers instead. While this is true, it does not raise a triable issue of fact that Pastor Vallejo controlled the worksite. Pastor Vallejo and plaintiff agreed the work would be done with a Church-provided sandblaster, on a Church-provided ladder, with Church-provided volunteer assistants. Plaintiff agreed to perform the work under those conditions and directed the assistants as he felt necessary at the worksite.

The evidence is undisputed that the Church did not control Amarra and Martinez at the worksite; plaintiff did. Therefore, plaintiff cannot pursue a cause of action against the Church for negligence/dangerous condition based on Amarra and Martinez's conduct at the worksite.

Negligent Supervision

Plaintiff alleged the Church knew or should have known Amarra and Martinez had poor judgment and would act with reckless disregard for his safety, or failed to sufficiently investigate Amarra and Martinez before assigning them to plaintiff.

In his deposition, plaintiff testified Pastor Vallejo promised him someone to help him hold the ladder. In his declaration in opposition to the summary judgment motion, plaintiff stated Pastor Vallejo promised him people who "would be able to provide adequate assistance in holding a ladder."⁴

Holding a ladder is unskilled work. The undisputed evidence is the Church supplied two men to hold the ladder, plaintiff told them to hold the ladder, and they did

⁴ In his brief on appeal, plaintiff asserts Pastor Vallejo promised him "professional help." We disregard this latter assertion as unsupported by the record.

hold the ladder correctly for a significant amount of time.⁵ This gives rise to the inference they were capable of holding the ladder correctly. Plaintiff introduced no evidence, beyond his conjecture that Amarra and Martinez let go of the ladder, that Amarra and Martinez were somehow incapable of properly holding the ladder. Nor did he introduce any evidence that the Church should have been aware of this failing in Amarra and Martinez. In his declaration, plaintiff conceded that, up until his fall, Amarra and Martinez had been correctly holding the ladder. The mere fact that plaintiff fell is not sufficient to raise a triable issue of fact that Amarra and Martinez let go of the ladder because they were somehow incapable of the job and the Church should have known it. Plaintiff therefore failed in raising a triable issue of fact as to his cause of action for negligent supervision.

DISPOSITION

The judgment is affirmed. The Church is to recover its costs on appeal.
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GRIGNON, J.

We concur:

TURNER, P. J.

MOSK, J.

⁵ At the hearing on the summary judgment motion, plaintiff conceded Amarra and Martinez successfully held the ladder for the first seven sections of the building, and that the fall occurred on the eighth section, which was indistinguishable from the first seven.